IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

Crl.MC.No. 3627 of 2007()

CP.52/2007 of JUDL. MAGISTRATE OF FIRST CLASS, CHANGANACHERRY

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PETITIONER: ACCUSED NO.1

VINODH, PLANTHOTTATHIL KAROTTU,
THRIKKODITHANAM, CHANGANACHERRY.

BY ADV. SRI.M.P.MADHAVANKUTTY

RESPONDENTS: COMPLAINANT

STATE OF KERALA,
REPRESENTED BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. M.S. BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 05/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3627 of 2007

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Dated this the 5th day of December, 2007

O R D E R

The petitioner faces indictment as the first accused in a prosecution under the provisions of the Kerala Abkari Act. The petitioner was enlarged on bail at the crime stage. Final report has been filed. Cognizance has been taken by the learned Magistrate. Committal proceedings has been registered. Summons was issued to the petitioner to appear on 17.8.2007. The petitioner did not appear on that day. No representation was also made before the court on that day. A warrant of arrest has been issued against the petitioner. The case now stands posted to 17.12.2007.

2. Learned counsel for the petitioner submits that the petitioner is absolutely innocent. His failure/omission to appear on 17.8.2007 and thereafter was not wilful or deliberate. He is willing to surrender before the learned Magistrate and seek bail. But he apprehends that his application for bail may not be

considered by the learned Magistrate on merits, in accordance with law and expeditiously. In these circumstances it is prayed that appropriate directions may be issued to the learned Magistrate to release the petitioner on bail on the date of surrender itself.

3. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

4. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice

to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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